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17 Attorney for Britney J. Spears

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS**  
 19 **ANGELES—STANLEY MOSK**

20 In re Conservatorship of the Person and the ) CASE NO. BP108870  
 21 Estate of BRITNEY JEAN SPEARS )

22 ) **DECLARATION OF PROFESSOR**  
 23 ) **WILLIAM MCGOVERN**

24 ) [Dept. 9]  
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29 I, William McGovern do state and declare as follows:

- 30 1. I am a Professor of Law, Emeritus, at UCLA. My educational background and publications are listed in an appendix to this declaration.
- 31 2. I have examined the orders entered by the Superior Court on February 2, 2008 in the above case, including the Order Appointing Temporary Conservator of the Estate, the Letters

32 **DECLARATION OF PROFESSOR WILLIAM MCGOVERN**

**FILED**  
 Los Angeles Superior Court

**MAR 17 2008**

John A. Clarke, Executive Officer/Clerk

BY *[Signature]*  
 A. Walls

- 1 accompanying the order, Order Appointing Temporary Conservator of the Person and the  
2 accompanying letters, and the Order Dispensing with Notice. I have also examined the  
3 Petitions for Appointment of Conservator of the Person and Estate filed by James Spears,  
4 pursuant to which the foregoing orders were issued, and the Declaration of Lynne Spears in  
5 Support of the Ex Parte Application.
- 6 3. These orders are all defective in that no notice of the hearing was "personally delivered to  
7 the proposed conservatee" as required by California Probate Code § 2250(c)(2). No reason  
8 for dispensing with this requirement was suggested by the Order Dispensing with Notice.  
9 Checking a box on a printed form stating that "notice of hearing is dispensed with" for no  
10 stated reason does not comply with the statute. The statute is designed to limit exceptions  
11 to the notice requirement "to only cases when waiver of the notice is essential to protect the  
12 proposed conservatee. . . or the estate of the proposed conservatee. . . from substantial  
13 harm." CPC § 2250(k). Nothing in the Declaration of Lynne Spears suggest that giving the  
14 conservatee notice of the proceedings would be prejudicial to her, much less that lack of  
15 notice was "essential to protect her from substantial harm."
- 16 4. This statute was amended in 2007 because "a perceived failure of the current  
17 conservatorship was the imposition of temporary conservatorships with virtually no notice  
18 to conservatees. . . The Legislature expressed particular concern about abuse of the good  
19 cause exception for personal service on the conservatee and required the Judicial Council to  
20 adopt a rule of court establishing uniform standards for determining what is good cause."  
21 Corey, Lodise and Stern, *Crisis in Conservatorships*, 12 California Estates and Trusts  
22 Quarterly, No 4. p. 43, (Winter 2007). The more specific language of this rule Rule 7.1012  
23 (see Appendix) confirms that failure to give notice was not warranted in this case.
- 24 5. Under California Probate Code § 1823(b)(6), a proposed conservatee "has the right to  
25 choose and be represented by counsel." This right was infringed by the Order Appointing  
26 Temporary Conservator of the Person which allowed the Temporary Conservator "to restrict  
27 and limit visitors" to the conservatee and allowing him to approve the location for any  
28 meeting with counsel. This restriction also is contrary to Section 2113 which requires  
conservators to "accommodate the desires of the conservatee" with limited exceptions.
6. California Probate Code § 1301(a) limiting appeals from the "granting . . . letters of . . .  
temporary conservatorship" should not apply in this case. Under Section 2250(f) such  
orders when granted ex parte require that a hearing be held within 30 days, with notice to  
"the proposed ward if 12 years of age or older" under Section 1511. To permit a  
"temporary" conservatorship created ex parte to last more than 30 days without giving the  
conservatee an opportunity to appear and be heard infringes her rights to due process under  
the U.S. and California constitutions as well as the spirit of the Probate Code.

#### Appendix A

**Rule 7.1012. The good cause exception to notice of the hearing on a petition for appointment of a temporary guardian**

**(a) Purpose**

The purpose of this rule is to establish uniform standards for the good cause exception to the notice of the hearing required on a petition for appointment of a temporary guardian under Probate Code section 2250(c).

**(b) Good cause for exceptions to notice limited**

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1 Good cause for an exception to the notice required by section 2250(c) must be based on a showing  
2 that the exception is necessary to protect the proposed ward or his or her estate from immediate and  
substantial harm.

3 **(c) Court may waive or change the time or manner of giving notice**

4 An exception to the notice requirement of section 2250(c) may include one or any combination of  
the following:

5 (1) Waiving notice to one, more than one, or all persons entitled to notice;

6 (2) Requiring a different period of notice; and

7 (3) Changing the required manner of giving notice, including requiring notice by telephone, fax, e-  
mail, or a combination of these methods, instead of notice by personal delivery to the proposed  
ward's parents or to a person with a visitation order.

8 **(d) Good cause exceptions to notice**

9 Good cause for an exception to the notice requirement of section 2250(c) may include a showing  
of:

10 (1) Harm caused by the passage of time. The showing must demonstrate the immediate and  
substantial harm to the ward or the ward's estate that could occur during the notice period.

11 (2) Harm that one or more persons entitled to notice might do to the proposed ward, including  
abduction; or harm to the proposed ward's estate if notice to those persons is given. Such a  
showing would not support an exception to the requirement to give notice to any other person  
entitled to notice unless it also demonstrates that notice cannot reasonably be given to the other  
person without also giving notice to the persons who might cause harm.

12 (3) The death or incapacity of the proposed ward's custodial parent and the petitioner's status as the  
custodial parent's nominee.

13 (4) Medical emergency. The emergency must be immediate and substantial and treatment (1) must  
be reasonably unavailable unless a temporary guardian is appointed and (2) cannot be deferred for  
the notice period because of the proposed ward's pain or extreme discomfort or a significant risk of  
harm.

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28 DECLARATION OF PROFESSOR WILLIAM MCGOVERN

(5) Financial emergency. The emergency must be immediate and substantial and other means shown likely to be ineffective to prevent loss or further loss to the proposed ward's estate or loss of support for the proposed ward during the notice period.

**(e) Contents of request for good cause exception to notice**

A request for a good cause exception to the notice requirement of section 2250(c) must be in writing, separate from the petition for appointment of a temporary guardian, and must include:

- (1) An application containing the case caption and stating the relief requested;
- (2) An affirmative factual showing in support of the application in a declaration under penalty of perjury containing competent testimony based on personal knowledge;
- (3) A declaration under penalty of perjury based on personal knowledge containing the information required for an ex parte application under rule 3.1204(b);
- (4) A memorandum; and
- (5) A proposed order.

**Appendix B**

NAME: William M. McGovern

ADDRESS: UCLA Law School, Box 954176 Los Angeles, CA 90095-1476

Tel. 310-825-1137 Fax 310-267-0158 email: mcgovern@law.ucla.edu

BIRTH DATE: July 9, 1934

EDUCATION: A.B. Princeton University, 1955

LL.B. Harvard University, 1958

Member of Illinois Bar, Associate, Sidley & Austin, Chicago, 1959-63

**ACADEMIC APPOINTMENTS:**

Professor of Law, Northwestern University 1963-1971

Visiting Professor, University of Minnesota Law School, 1979-80

Visiting Professor, University of Virginia Law School, Spring 1983

Professor of Law, UCLA 1971-94, currently Emeritus

Universities of Jena and Erlangen, Germany (Spring 2001)

**OTHER APPOINTMENTS:**

Adviser to Restatement (Third) of Trusts and Restatement (Third) of Property (Wills and Other Donative Transfers) (from 1997)

Member, Commission on National Probate Standards

**BIBLIOGRAPHY: Books:**

Restatement (Third) of Trusts (in progress, Associate Reporter with Edward Halbach, 1996-98)

Annotated California Probate Code (1995 and following)

Trusts and Estates: Wills, Trusts, Future Interests and Taxation West, 1988 (3d ed. 2004)  
(with Sheldon Kurtz)

National Probate Court Standards (with others) 1993

**Papers:**

"Contract in Medieval England: Wager of Law and the Effect of Death," 54 Iowa L. Rev. 19-62 (1968)

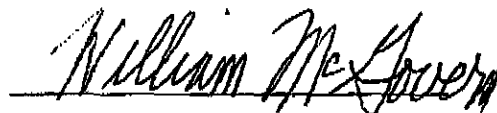
"Contract in Medieval England: The Necessary for Quid pro Quo and a Sum Certain," 13 Amer. J. of Leg. Hist. 173-201 (1969)

"Homicide and Succession to Property," 68 Mich. L. Rev. 65-110 (1969)

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1 "The Enforcement of Oral Covenants Prior to Assumpsit," 65 Nw. U.L. Rev. 576-614  
2 (1970)  
3 "The Enforcement of Informal Contracts in the Later Middle Ages," 59 Calif. L. Rev.  
4 1145-1192 (1971)  
5 "Perpetuities Pitfalls and How Best To Avoid Them," 6 Real Prop., Prob. & Trust L.J.  
6 155-77 (1971)  
7 "The Payable on Death Account and Other Will Substitutes," 67 Nw. U. L. Rev. 7-41  
8 (1972)  
9 "The Historical Conception of a Lease for Years," 23 UCLA L. Rev. 501-28 (1976)  
10 "Dependent Promises in the History of Leases and Other Contracts," 52 Tul. L. Rev.  
11 659-705 (1978)  
12 "Facts and Rules in the Construction of Wills," 26 UCLA L. Rev. 285-321 (1978)  
13 "Forfeiture, Inequality of Bargaining Power, and the Availability of Credit: An Historical  
14 Perspective," 74 Nw. U.L. Rev. 141-65 (1979)  
15 "Nonprobate Transfers under the Revised Uniform Probate Code," 55 Albany L. Rev.  
16 1329-53 (1992)  
17 "Trusts, Custodianships and Durable Powers of Attorney," 27 Real Property Probate and  
18 Trust Journal 1-47 (1992)  
19 "Undue Influence and Professional Responsibility," 28 REAL PROPERTY, PROBATE AND  
20 TRUST J 643-81 (1994)  
21 "The Increasing Malpractice Liability of Will Drafters," 133 Trusts and Estates (Dec. 1994)  
22 p. 10  
23 "Rules of Construction: Probate Code Sections 21101-21140," study for the California Law  
24 Revision Commission (2000).

25 I declare under penalty of perjury of the laws of the State of California that the foregoing is true and  
26 correct, and as to those matters stated upon information and belief, I believe them to be true and  
27 correct. Executed this 14<sup>th</sup> day of March 2008 in Los Angeles, California.  
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William McGovern

DECLARATION OF PROFESSOR WILLIAM MCGOVERN

## PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 16020 Puesta Del Sol, Whittier, CA.

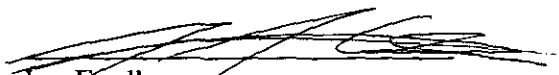
On March 17, 2008 I served the foregoing document, described as DECLARATION OF PROFESSOR WILLIAM MCGOVERN on the interested parties in this action by placing a true copy thereof, in sealed envelopes addressed as follows:

Geraldine A. Wyle, Esq.  
Luce, Forward, Hamilton, & Scripps LLP  
601 S. Figueroa Street, Suite 3900  
Los Angeles, CA 90017

Andrew Wallet, Esq.  
Hinojosa & Wallet  
2215 Colby Avenue  
Los Angeles, CA 90064

☒ By mail. I am readily familiar with the firm's practice of collection and sending of correspondence. Pursuant to this practice of collection and processing correspondence, it is mailed on date of this service.

Executed this 17<sup>th</sup> day of March 2008 in Whittier, CA 90603. I declare under penalty of perjury that the foregoing is true and correct.

  
Jon Eardley